



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 19, 2017
MAHS Docket No.: 16-016228
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a hearing was held on [REDACTED] from Detroit, Michigan. Petitioner appeared and represented herself. [REDACTED] Family Independence Specialist, appeared on behalf of the Department of Health and Human Services (Department).

The Department offered the following exhibits, which were marked and admitted into evidence: [**Department's Exhibit A:** Notice of Case Action, **Department's Exhibit B:** Notice of Noncompliance, **Department's Exhibit C:** PATH Appointment Notice, **Department's Exhibit D:** Medical-Social Eligibility Certification, **Department's Exhibit E:** Benefit Notice and **Department's Exhibit F:** Bridges Prior IPV].

Petitioner did not offer any exhibits into evidence.

The record closed at the conclusion of the hearing.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) benefits and reduce Petitioner's Food Assistance Program (FAP) monthly allotment due to failure to comply with the Partnership.Accountability.Training.Hope. (PATH) program requirements?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was active for FIP and FAP benefits. [Department's Exhibit A].
2. Petitioner had a prior noncompliance with PATH concerning FAP benefits that occurred in [REDACTED] [Dept. Exh. F].
3. The Department requested that Petitioner participate with the PATH program. [Hearing Testimony].
4. Petitioner alleged that she was unable to attend PATH due to a disability. [Hearing Testimony].
5. The Department forwarded Petitioner to the Disability Determination Service (DDS) to determine whether she was entitled to a deferral from PATH due to a disability. [Hearing Testimony].
6. On [REDACTED], the DDS determined that Petitioner was capable of performing other work. [Dept. Exh. D].
7. On [REDACTED], the Department manually mailed Petitioner a Benefit Notice (DHS-176), which indicated that she is still eligible for FIP benefits, but that DDS determined that she did not meet the disability requirements to be deferred from PATH. [Dept. Exh. E].
8. On [REDACTED] the Department mailed Petitioner a PATH Appointment Notice, which requested that she appear for PATH orientation on [REDACTED]. [Dept. Exh. C].
9. On [REDACTED], the Department mailed Petitioner a Notice of Noncompliance with scheduled a triage appointment for [REDACTED]. This was Petitioner's first alleged PATH noncompliance concerning FIP benefits and her second alleged PATH noncompliance concerning FAP. [Dept. Exh. B].
10. On [REDACTED], the Department mailed Petitioner a Notice of Case Action, which indicated that Petitioner's FIP case would close for three months due to the first alleged PATH violation on [REDACTED], and that her monthly FAP benefits would decrease to \$ [REDACTED] for six months also effective [REDACTED], [REDACTED] due to an alleged second alleged PATH violation concerning FAP benefits. [Dept. Exh. A].
11. Petitioner requested a hearing to dispute the FIP closure and FAP reduction due to the imposition of a penalty for PATH noncompliance. [Request for Hearing].
12. The hearing took place on [REDACTED].

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services

Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

As a condition of eligibility, FIP applicants must attend the Partnership.Accountability.Training.Hope. (PATH) program and maintain 21 days' attendance. BEM 229 (10-1-2015), p. 1. The program requirements, education and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. BEM 229, p. 1.

In order for the FIP application to be approved, all FIP applicants must complete each of the following: (1) begin the application eligibility period (AEP) by the last date to attend as indicated on the DHS-4785, PATH Appointment Notice; (2) complete PATH AEP requirements; (3) continue to participate in PATH after completion of the 21-day AEP. BEM 229, p. 1. The Department will deny the FIP application if an applicant does not complete **all** of the above three components of the AEP. BEM 229, p. 1.

BEM 229, page 2 specifically provides that clients should not be referred to orientation and AEP until it is certain that barriers to participation such as lack of child care or transportation have been removed, possible reasons for deferral have been assessed and considered, and disabilities have been accommodated. [Emphasis added].

A Work Eligible Individual (WEI) and non-WEI¹, who fails to participate in employment or self-sufficiency-related activities without good cause, must be penalized. BEM 233A (10-1-2015), p. 1. Depending on the case situation, penalties include the following: (1) delay in eligibility at application; (2) ineligibility (denial or termination of FIP with no minimum penalty period); (3) case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A (4-1-2016), p. 1. [Emphasis added].

¹ Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency related assignments and to ensure that barriers to such compliance have been identified and removed. BEM 233A, p. 1. The goal is to bring the client into compliance. BEM 233A, p. 1.

Bridges will not penalize Food Assistance Program when a client fails to attend PATH as a condition of eligibility when the noncompliant individual is not active FIP on the date of the noncompliance. BEM 229, p. 6. Clients must be active FIP and FAP on the date of FIP noncompliance to apply a FIP penalty to the FAP case. BEM 229, p. 6.

Generally speaking, federal and state laws require each work eligible individual (WEI) in the FIP group to participate in the PATH Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (10-1-2015), p. 1. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. BEM 230A, p. 1. A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. BEM 230A, p. 1.

Certain clients have particular circumstances which may make their participation in employment and/or self-sufficiency related activities problematic. BEM 230A, p. 2. Unless otherwise deferred, they must be referred to the work participation program. BEM 230A, p. 2. [Emphasis added].

A number of FIP clients have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities. BEM 230A, p. 2. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. BEM 230A, p. 2. DHHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHHS programs and services to the same extent as persons without disabilities. BEM 230A, p. 2. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. BEM 230A, p. 2. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency. BEM 230A, p. 3.

Section 504 of the American Disability Act defines a “disability” as a physical or mental impairment that substantially limits one or more major life activities; or a history of such an impairment; or being regarded as having such an impairment. Examples of major life activities include: thinking, learning, taking care of oneself, maintaining social relationships, sleeping, communicating, etc. BEM 230A, p. 2.

A disability that requires reasonable accommodation must be verified by an appropriate source, such as a doctor, psychologist, therapist, educator, etc. BEM 230A, p. 3. A client may disclose a disability at any time. BEM 230A, p. 3. Failure to disclose at an earlier time does not prevent the client from claiming a disability or requesting an accommodation in the future. BEM 230A, p. 3.

The Department must help clients understand that DHHS can only offer accommodations if a disability is verified. BEM 230A, p. 3. The Department is also required to do the following: (1) inform clients requesting accommodation or deferral that they may be required to attend appointments with doctors, psychologists, or others to ensure that appropriate accommodations or deferrals are made; (2) explain that assessment is voluntary but failure to cooperate with assessment may prevent DHS from providing a deferral or accommodation; and (3) inform the client of the requirement to engage in self-sufficiency and family strengthening activities even if they are deferred from PATH or work activities and may be subject to penalties if they do not participate as required. BEM 230A, p. 3.

When information provided by an appropriate source indicates the need for reasonable accommodation, the Department must do the following: (1) obtain a Medical Needs (DHS-54A) or a Medical Needs-PATH (DHS-54E) form from a qualified medical professional listed on the form; (2) consult Michigan Rehabilitation Services (MRS) if additional information about appropriate accommodations is needed; and (3) document the accommodation in the Other MWA referral comments section of the Employment Services - Details screen, and on the Family Self-Sufficiency Plan (FSSP). BEM 230A, pp. 3-4.

A person with short-term incapacity may be deferred for up to 3 (three) months. BEM 230A. A person with a short-term incapacity is a person with a mental or physical illness, limitation, or incapacity expected to last less than 3 (three) months which prevents participation. BEM 230A. The Department will verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs, or DHS-54E, Medical Needs - Work Participation Program, or other written statement from an M.D./D.O. BEM 230A. Then, the Department shall set the medical review date accordingly, but not to exceed three months. BEM 230A. BEM 230A specifically prohibits the Department from advising with a short-term incapacity to apply for SSI. BEM 230A.

A person with long-term incapacity, or disability, may be deferred. BEM 230A. At intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or the work participation program for more than 90 days because of a mental or physical condition, the client should be deferred. BEM 230A. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. BEM 230A. This may include those who have applied for RSDI/SSI. BEM 230A.

Determination of a long term disability is a three-step process. BEM 230A, pp. 12-13.

Step One: Establishment of Disability. Once a client claims a disability he/she must provide DHHS with verification of the disability when requested. The verification must indicate that the disability will last longer than 90 calendar days. If the verification is not returned, a disability is not established. The client will be required to fully participate in the work participation program as a mandatory participant. BEM 230A, p. 12.

Step Two: Defining the Disability. For verified disabilities over 90 days, see BAM 815, Medical Determination and Disability Determination Service (DDS), for the policy

requirements in obtaining a medical certification from DDS. If the client does not provide the requested verifications, the FIP should be placed into closure for failure to provide needed documentation. BEM 230A, p. 12.

For verified disabilities over 90 days, the client must apply for benefits through the Social Security Administration (SSA) before step three. See BAM 815, Medical Determination and Disability Determination Service and BEM 270, Pursuit of Benefits. In Bridges, the Deferral/Participation Reason is *Establishing Incapacity* while awaiting the DDS decision. BEM 230A, p. 12.

Step Three: Referral to DDS

Send the completed required forms along with any medical evidence provided, to the DDS to begin the medical development process. The Deferral/Participation Reason in Bridges remains *Establishing Incapacity*. Manually set a reminder in Bridges for a three-month follow-up. BEM 230A, p. 13.

Upon the receipt of the DDS decision, the Department will review the determination and information provided by DDS. The Department will establish the accommodations the recipient needs to participate in PATH or to complete self-sufficiency-related activities. BEM 230A, p. 13. Recipients determined by DDS to be work ready are able to fully engage in PATH without any accommodation. BEM 230A, p. 13. [Emphasis added].

An applicant, recipient or a member add is noncompliant if he or she, without good cause, fails or refuses to do any of the following: (1) appear and participate with the PATH Program or other employment service provider; (2) complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process; (3) develop a FSSP or a Personal Responsibility Plan and Family Contract (PRPFC); (4) comply with activities assigned to on the FSSP; (5) provide legitimate documentation of work participation; (6) appear for a scheduled appointment or meeting related to assigned activities; (7) participate in employment and/or self-sufficiency-related activities; (8) accept a job referral; (9) complete a job application; (10) appear for a job interview.² BEM 233A.

PATH participants will not be terminated from a PATH program without first scheduling a “triage” meeting with the client to jointly discuss noncompliance and good cause. BEM 233A. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines. BEM 233A.

Good cause is a valid reason for noncompliance with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the noncompliant person. A claim of good cause must be verified and documented for

² The Department will not apply the three month, six month or lifetime penalty to ineligible caretakers, clients deferred for lack of child care and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time. BEM 233A.

member adds and recipients. If it is determined at triage that the client has good cause, and good cause issues have been resolved, the client should be sent back to JET. BEM 233A. Good cause should be determined based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHHS or MWA. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. BEM 233A.

The penalty for noncompliance without good cause is FIP closure. BEM 233A. Depending on the case situation, penalties include the following: (1) delay in eligibility at application; (2) ineligibility (denial or termination of FIP with no minimum penalty period); (3) case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A.

Here, the Department closed Petitioner's FIP case and reduced her FAP benefits because she failed to attend PATH orientation on [REDACTED]. The Department representative who attended the hearing testified that this was Petitioner's second PATH noncompliance concerning FAP benefits. Petitioner, on the other hand, challenges the DDS determination and disputes that this is her second noncompliance with regard to PATH concerning FAP benefits.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. There is no dispute that Petitioner failed to attend PATH. There is also no question that the DDS determined that Petitioner was not entitled to a deferral based on a disability and that she was capable of participating in PATH activities. Although Petitioner challenges the DDS findings, the question concerning whether Petitioner is disabled is not properly before this Administrative Law Judge. According to BEM 230A, p. 12, policy clearly provides that when DDS determines that a recipient is work ready, he or she is able to fully engage in PATH without any accommodation. This policy requires the Department follow DDS as Petitioner is a mandatory participant (BEM 230A, pp. 12-14) and does not permit Petitioner to challenge the DDS findings concerning disability.

Based on the competent, material and substantial evidence on the whole record, this Administrative Law Judge finds that Petitioner was noncompliant with PATH program requirements and has failed to show good cause for failing to attend PATH orientation due to an alleged disability. The DDS found that Petitioner was ready for work without accommodation. The Department must engage Petitioner in PATH under these circumstances. With regard to the Department's decision to impose a 6-month FAP sanction, this Administrative Law Judge finds that the Department has shown that Petitioner had a prior FAP related PATH violation that took place.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it closed and imposed sanctions concerning

Petitioner's FIP case and reduced Petitioner's FAP benefits due to noncompliance with PATH program requirements.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**. The Department properly closed Petitioner's FIP case for noncompliance with PATH requirements and properly imposed the 3-month FIP sanction. The Department properly reduced Petitioner's FAP benefits and properly imposed a 6-month sanction.

IT IS SO ORDERED.

MJB/jaf



Michael J. Bennane
Administrative Law Judge
for Nick Lyon, Director
Department of Health & Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]

[REDACTED]